

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
TEXARKANA DIVISION

JAMES COY COLE

PLAINTIFF

v.

Civil No. 4:18-cv-4041

RYAN RUSSELL, Chief of Police,
Prescott Police Department; and,
JOEY BEVIS, Detective, Prescott
Police Department

DEFENDANTS

ORDER

Currently before the Court is Plaintiff's failure to obey a Court order and failure to prosecute this case. Plaintiff James Coy Cole proceeds in this matter *pro se* pursuant to 42 U.S.C. § 1983.

Plaintiff filed his Complaint in the Eastern District of Arkansas on November 20, 2017. (ECF No. 1). On March 28, 2018, an Order was entered directing that the case be transferred to the Western District of Arkansas. (ECF No. 2).

Also on March 28, 2018, the Court issued an order finding that Plaintiff failed to submit an application to proceed *in forma pauperis* ("IFP"). The Court directed Plaintiff to complete and return an application for IFP or pay the filing fee by April 20, 2018. (ECF No. 5). The Court advised Plaintiff that if he failed to do so, "the complaint will become subject to summary dismissal for failure to obey an order of the Court." (ECF No. 5).

In the same Order, the Court directed the Plaintiff to submit an amended Complaint by April 20, 2018. (ECF No. 5). The Order states "Plaintiff's case shall be subject to dismissal if he fails to return the Amended Complaint to the Court by April 20, 2018." (ECF No. 5).

Finally, the Order advised the Plaintiff “that he is required to immediately inform the Court of any change of address.” (ECF No. 5). And that “[f]ailure to inform the Court of an address change may result in the dismissal of this case.” (ECF No. 5).

On April 10, 2018, the Order directing that an Amended Complaint and IFP application be filed was returned as undeliverable and marked “Return to Sender -- Not in jail.” (ECF No. 6). The Plaintiff did not file an Amended Complaint or an IFP application within the time required by the March 28, 2018 Order.

Plaintiff has not communicated with the Court since filing his original Complaint in the Eastern District of Arkansas on November 20, 2017. Plaintiff has not provided the Court with a current and correct address.

Although *pro se* pleadings are to be construed liberally, a *pro se* litigant is not excused from complying with substantive and procedural law. *Burgs v. Sissel*, 745 F.2d 526, 528 (8th Cir. 1984). The Local Rules state in pertinent part:

It is the duty of any party not represented by counsel to promptly notify the Clerk and the other parties to the proceedings of any change in his or her address, to monitor the progress of the case, and to prosecute or defend the action diligently . . . If any communication from the Court to a *pro se* plaintiff is not responded to within thirty (30) days, the case may be dismissed without prejudice. Any party proceeding *pro se* shall be expected to be familiar with and follow the Federal Rules of Civil Procedure.

Local Rule 5.5(c)(2).

Additionally, the Federal Rules of Civil Procedure specifically contemplate dismissal of a case on the grounds that the plaintiff failed to prosecute or failed to comply with orders of the court. Fed. R. Civ. P. 41(b); *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630-31 (1962) (stating that the district court possesses the power to dismiss *sua sponte* under Rule 41(b)). Pursuant to Rule

41(b), a district court has the power to dismiss an action based on “the plaintiff’s failure to comply with *any* court order.” *Brown v. Frey*, 806 F.2d 801, 803-04 (8th Cir. 1986) (emphasis added).

Plaintiff has failed to comply with a Court Order directing him to complete an application for IFP or pay the required filing fee. Plaintiff has failed to comply with a Court Order directing him to file an Amended Complaint. Plaintiff has failed to prosecute this matter. Pursuant to Federal Rule of Civil Procedure 41(b) and Local Rule 5.5(c)(2), Plaintiff’s Complaint should be dismissed without prejudice for failure to comply with the Court’s Local Rules and Orders and failure to prosecute this case. Accordingly, Plaintiff’s Complaint (ECF No. 1) is **DISMISSED WITHOUT PREJUDICE**.

IT IS SO ORDERED, this 21st day of May, 2018.

/s/ Susan O. Hickey
Susan O. Hickey
United States District Judge